

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

ANTONIO M. BREAKMAN,)	CASE NO. 3:10-CV-0487-WGC
)	
Plaintiff(s),)	MINUTES OF THE COURT
)	
vs.)	DATED: MARCH 19, 2012
)	
TOM STUBBS,)	
)	
Defendant(s).)	

PRESENT: HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

Deputy Clerk: JENNIFER COTTER Reporter: FTR: 1:30:53 p.m. - 2:28:22 p.m.

Counsel for Plaintiff(s): ANTONIO BREAKMAN, In Pro Per (telephonically)

Counsel for Defendant(s): TIMOTHY ANDREWS (telephonically)

PROCEEDINGS: **PRETRIAL CONFERENCE**

1:30 p.m. Court convenes.

Plaintiff makes an oral motion for an appointment of counsel. The Court advises plaintiff that a litigant in a civil rights action does not have a right to appointed counsel. Plaintiff was further advised that the court may only do so under very limited and extraordinary circumstances where the plaintiff demonstrates a likelihood of recovery and that the issues presented by the court are complex or complicated. Plaintiff has not done so herein. **IT IS ORDERED** that Plaintiff's motion for appointment of counsel is **DENIED**.

Plaintiff advises the court that he has been unable to file a pretrial brief because of his recent transfer from the Ely State Prison to the Northern Nevada Correctional Center. Plaintiff asks for a continuance of the trial. Certain discussion about whether the trial would be continued ensues.

The Court addresses Defendants' "Omnibus Motion In Limine" (Doc. 49). In the course of argument, the Court is advised by defendant's counsel that Plaintiff's medical file includes a note on December 25, 2009, which reads, "See unusual occurrence for this date & time." Mr. Andrews acknowledges that, if there is a separate incident report regarding this entry, he (Mr. Andrews) has not seen the report and that this report ("Unusual Occurrence" Report) has not been provided to Plaintiff. Mr. Andrews stated this document should have been provided to Plaintiff and that he would be willing to do so.

Page Two
3:10-cv-0487-WGC (Breakman v. Stubbs)
March 19, 2012

IT IS ORDERED that Mr. Andrews shall provide to Plaintiff copies of plaintiff's medical records for the dates of December 25, 2009 and December 26, 2009, and Plaintiff shall be given an opportunity to review his medical records. The unusual incident report from December 25, 2009, shall also be provided to Plaintiff.

Defendant further seeks in his "Omnibus" motion to preclude plaintiff from testifying about other purported incidents of "excessive force" allegedly inflicted on other inmates at Ely State Prison. Plaintiff is instructed that his testimony at trial is limited to what is relevant in this action. He shall not be allowed to testify regarding his allegations of other incidents of abuse. The plaintiff is advised by the court that such testimony would be irrelevant and inadmissible. Plaintiff is further advised that affidavits and declarations are not admissible at trial without the consent of opposing counsel.

Defendant seeks to strike plaintiff's proposed pretrial order (Doc. #43) and to exclude "medical records [and] defendant's employment file." However, plaintiff will be allowed to refer to any medical records which address his alleged injuries sustained in the incident. The defendant's employment file will not be admitted (See Doc. #43).

Defendant's motion for leave to present demonstrative aids (aerial photograph of ESP and a floor plan for a "typical housing unit therein") is **GRANTED**.

IT IS FURTHER ORDERED that the trial in this matter shall be **CONTINUED** and shall commence on **Monday, April 16, 2012 at 9:00 a.m.** The Nevada Department of Corrections shall:

(1) produce inmate Antonio Breakman, #83500, at the Bruce R. Thompson Federal Building & U.S. Courthouse, 400 S. Virginia St., Reno, NV 89501 at 8:00 a.m. on April 16, 2012, and at 8:00 a.m. on each and every day that follows until 5:00 p.m. on April 17, 2012, or until trial in the above-captioned matter is completed, whichever is later; and,

(2) make other necessary arrangements to ensure inmate Antonio Breakman, #83500, remains physically present at the Bruce R. Thompson Federal Building & U.S. Courthouse, 400 S. Virginia St., Reno, NV 89501 from 8:00 a.m. through 5:00 p.m. for the duration of the trial.

IT IS FURTHER ORDERED that a Status Conference, with respect to the production of records, is set for **Monday, March 26, 2012, at 1:00 p.m.** Additionally, a Pretrial Conference is set for **Monday, April 9, 2012, at 1:30 p.m.** The Office of the Attorney General shall arrange for the plaintiff to be present by telephone and shall contact the courtroom administrator, Jennifer Cotter, at (775) 686-5758, at least two (2) days prior to the hearing(s) to advise her of the number where Plaintiff may be reached at the time of the hearing(s).

Plaintiff requests an extension time in which to file his trial brief. The Pretrial Order (Doc. 50) entered on March 7, 2012, provides that trial briefs should be filed no later than March 16, 2012. He represents that he did not receive the Pretrial Order until March 13, and he was transferred to Northern Nevada Correctional Center shortly thereafter. **IT IS ORDERED** that this request is **GRANTED**. Plaintiff shall have until March 30, 2012, to file a trial brief. Plaintiff shall identify any additional documents he would like to utilize at trial; however, because any such documents were not included in either of the two pre-trial orders plaintiff submitted, the Court reserves ruling on whether any additional documents may be admitted.

Page Three
3:10-cv-0487-WGC (Breakman v. Stubbs)
March 19, 2012

As noted above, **IT IS ORDERED** that Defendants' Motion in Limine (Doc. 49) is **GRANTED** with respect to the Motion to Limit Testimony and the Motion for Leave to Present Demonstrative Aides. The motion is **DENIED** with respect to the Motion to Strike Plaintiff's separate Pretrial Order.

2:28 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/

Deputy Clerk